

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

|                                  |   |                        |
|----------------------------------|---|------------------------|
| Joseph W. Fennell,               | ) | C/A No.: 4:09-3051-JFA |
|                                  | ) |                        |
| Plaintiff,                       | ) |                        |
| v.                               | ) | ORDER                  |
|                                  | ) |                        |
| Michael J. Astrue,               | ) |                        |
| Commissioner of Social Security, | ) |                        |
|                                  | ) |                        |
| Defendant.                       | ) |                        |
| _____                            | ) |                        |

This matter is before the court upon motion of the plaintiff's counsel, Beatrice Whitten, for attorney fees (ECF No. 40) under the Social Security Act, 42 U.S.C. § 406(b). Counsel has submitted copies of the Notice of Award from the Commissioner and the signed Fee Agreement of the plaintiff. The Commissioner has responded to the motion indicating that he does not oppose the fee request.

Plaintiff's counsel petitions the court for approval of a court-related fee in the amount \$25,128 pursuant to the terms of a written contingent-fee agreement with the plaintiff. That contingent-fee agreement provides, in pertinent part, for the payment of attorney fees in the amount of 25% of all past-due benefits recovered. The actual amount withheld by the Commissioner was \$25,128.

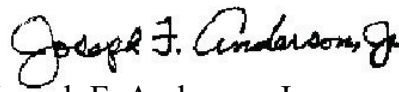
In the United States Supreme Court case of *Gisbrecht v. Barnhart*, 535 U.S. 780 (2002), the Court held that the provision of the Social Security Act limiting attorney fees to 25% of past-due benefits does not displace contingent-fee agreements that are within such statutory ceiling, and instructs courts to review for reasonableness fees yielded by such agreements.

Upon review of the material submitted to the court, the undersigned finds that plaintiff counsel's request for attorney fees is reasonable. Therefore, it is ordered that the Commissioner pay reasonable attorney fees totaling \$25,128 to be drawn out of the 25% amount withheld from the plaintiff's past-due benefits.

As this court has already awarded attorney fees to Ms. Whitten under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d) in the amount of \$6,536, plaintiff's counsel must refund that amount (\$6,536) to the plaintiff. *See Gisbrecht* at 796.

IT IS SO ORDERED.

June 26, 2012  
Columbia, South Carolina

  
Joseph F. Anderson, Jr.  
United States District Judge